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Thirty-eighth session

SUMMARY RECORD OF THE 969th MEETING

Held at Headquarters, New York,
on Friday, 30 March 1990, at 10 a.m.

Chairman: Mr. LALLAH

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The meeting was called to order at 10.40 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of the Dominican Republic (CCPR/C/32/Add.16) (continued)

1. At the invitation of the Chairman, Mr. Dipp Gomez and Mrs. de Polanco (Dominican Republic) took places at the Committee table.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section VIII of the list of issues)

2. Mr. DIPP GOMEZ (Dominican Republic) said that while the penalty of local expulsion was provided for under the Dominican Penal Code, it had never been applied in practice. The penalty was an anachronism and existed only because the Code had not yet been revised.

3. Aliens who might be subject to expulsion fell into two categories: those convicted of drug trafficking and those convicted of other violations of the domestic law of his country. Because drugs were such a serious problem in the Dominican Republic, drug traffickers who were subject to an expulsion order had no right of appeal.

4. Haitians were entitled to the same freedom of movement as anyone else living in the Dominican Republic. While it was true that the police sometimes checked the identity papers of Haitians, they were free to come and go as they pleased.

5. Mrs. DE POLANCO (Dominican Republic) said that her country's immigration law laid down the indictment and conviction procedures for aliens who broke the law. Conviction for an offence might lead to expulsion, but expulsion orders were subject to appeal. The alien had full legal opportunities to demonstrate that he had not committed the offence in question, in which case he would not be subject to expulsion.

6. Mr. AGUILAR URBINA expressed serious doubts about the system of having two categories of aliens who were subject to expulsion. Additional details on the grounds for subjecting drug traffickers to summary expulsion without trial should be provided.

7. Mrs. DE POLANCO (Dominican Republic) said that an individual accused of drug trafficking had the right to a fair and public trial with full guarantees, including the right of habeas corpus. If convicted, the individual could be expelled.

Right to life (article 6 of the Covenant) (section IV of the list of issues)

8. Mrs. DE POLANCO (Dominican Republic) said that under article 8 of the Constitution, the inviolability of life was one of the standards guaranteeing the accomplishment of the principal aims of the State. In addition to that constitutional provision, the inviolability of life was protected under the Dominican Penal Code. Neither the death penalty nor torture were permitted in the Dominican Republic.

Right to privacy (article 17 of the Covenant) (section IX of the list of issues)

9. Mr. POCAR drew attention to article 8 (3) of the Constitution, which stated that "No entry of a home may be made except in those cases indicated by law and according to formalities described therein". The reporting State should clarify what was meant by "cases indicated by law" and should explain how that exception applied in practice.

10. Mr. AGUILAR URBINA said that paragraph 6 (9) of the report stated that the secrecy of telegraphic, telephonic and cable communication was inviolable, and made no mention of any exceptions. He wished to know whether there were any conditions under which the secrecy of such communications could be violated.

11. Mr. WENNERGREN said that article 8 (9) of the Constitution was ambiguous. While that article provided for the absolute inviolability of telephone, telegraph and cable communication, it made no mention of protection for other types of communication. He would appreciate additional information on the protection of communication, specifically on any laws regulating the use of concealed electronic listening devices.

12. Mrs. DE POLANCO (Dominican Republic) said there were certain exceptions to the constitutional provision protecting the inviolability of the home. Representatives of the State were authorized to enter a home in cases where there was evidence that the occupants were harbouring a criminal or hiding weapons.

13. The Government was permitted to take measures to restrict the freedom of movement of individuals in the event of a threat to public policy or national security, or a natural disaster.

14. The secrecy of communications by telegraph, telephone and cable was inviolable in all cases. With respect to electronic listening devices, her country did not have such technology and thus did not regulate its use.

Freedom of conscience, religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenent) (section X of the list of issues)

15. Mrs. DE POLANCO (Dominican Republic) said that her country allowed full freedom of conscience and religious expression. Freedom of expression was also permitted, and all persons had free access to the media.

READEX FICHE

(Mrs. de Polanco, Dominican Republic)

16. In view of the fact that it could lead to destabilization of the Government, propaganda for war was prohibited. Incitement to national hatred was prohibited for similar reasons. There was no racial discrimination of any kind in her country.

17. The CHAIRMAN said that the reporting State should clarify exactly what was meant by "public policy".

18. Mrs. DE POLANCO (Dominican Republic) said that the only circumstances under which restrictions could be placed on the freedoms of conscience, religion and expression were when excercise of those freedoms was likely to endanger public policy or national security.

19. Mr. DIMITRIJEVIC said that the reporting State should clarify what it meant by "public policy" ("orden público") in paragraphs 34 and 35 of the report. Furthermore, he wished to know how the provisions of the Penal Code gave effect to the constitutional restriction on the freedoms of conscience, religion and expression. Specifically, what legal decisions had been handed down in that matter?

20. Article 8 (6) of the Constitution prohibited all "subversive propaganda". What was the precise meaning of that term as interpreted by the courts in the Dominican Republic?

21. Article 91 of the Penal Code, referred to in paragraph 37 of the report, provided a penalty for illegal action aimed at provoking civil war. However, article 91 did not seem to address the issues raised in article 20 of the Covenant, which prohibited propaganda for war and incitement to discrimination, hostility or violence. He would therefore appreciate information on other articles of the Penal Code which were relevant to article 20 of the Covenant.

22. Mr. ANDO asked for clarification of the expression "private news sources" as used in article 8 (10) of the Constitution and for details of any laws giving effect to that provision of the Constitution. He wished to know whether there was any case law on the subject.

23. Mr. AGUILAR URBINA commented that his earlier question about the meaning of the term "subversive" had yet to been answered. He wished to know whether any person who urged people not to comply with a law which he believed to be unconstitutional would be regarded as subversive, and if so, what penalties such a person would face.

24. There were a number of references in the Constitution to religion and belief in God, and it was clear that the Church played an important part in Dominican society. He wondered whether any advantages enjoyed by the Catholic Church were also enjoyed by other religious groups and atheists. The president was required to take an oath of office which began "I swear by God" (article 54 of the Constitution); would a President who was an atheist be required to take that oath, contrary to his beliefs?

25. Mr. POCAR, referring to the reply given by Mrs. de Polanco at the previous meeting about changes in the process by which judges were selected, said he understood that the Catholic Church would be among those represented on the commission set up to deal with the subject. He wished to know what part the Church played in the selection of judges and what influence the Church had on freedom of religion.

26. Mr. DIPP GOMEZ (Dominican Republic) said that the wording in the Constitution and the Penal Code to which Mr. Dimitrijevic had referred dated back to 1966, when the country had just emerged from a civil war, and reflected a fear of persecution and further hostilities. In fact, no one had been prosecuted for subversive propaganda. Candidates for political office criticized the Government freely. There was no censorship. The existence of a prohibition on subversive propaganda did not mean that the authorities were bent on prosecution.

27. In reply to Mr. Ando, he said that journalists were able to approach the police, the presidential palace, the courts and other institutions for information. The qualifications attached to the use of news sources were due to the Constitution's having been drafted in 1966 and containing provisions designed to maintain order and prevent public unrest. In fact, Dominican society had been living in harmony and the qualifications had not been put into effect.

28. While, traditionally, the Dominican Republic was a Catholic country, there were no restrictions on other religions. There was no persecution on religious grounds and the Church was freely criticized in the press and by politicians. Agnosticism was also permitted.

29. The Commission to which Mr. Pocar had referred was a constitutional commission set up to discuss changes in the way judges were selected. Any unfairness in the system would be swiftly criticized in the press. Since most members of the Government were Christian and Catholic, they did have a high regard for the Catholic Church; the Church thus wielded considerable moral influence, but had little political weight.

30. Mrs. DE POLANCO (Dominican Republic) said that "subversion" was defined, in the early part of the Penal Code, as action designed to incite people to take up arms against one another.

31. While there were a number of Communists and atheists in the Dominican Republic, 90 per cent of the population was Christian and Catholic. She did agree that the Presidential oath of office ought to be reviewed. The bill to change the process by which judges were selected was being studied by a constitutional commission composed of legal experts, scholars and faculty members from a number of institutions, including the Catholic University. The Church was not represented as such.

32. The CHAIRMAN commented that, if 90 per cent of the population were Catholic, 10 per cent must be free thinkers or atheists. His own country had a multiplicity of religions, and anyone who did not wish to swear a religious oath could make a

(The Chairman)

solemn affirmation - as, indeed, the members of the Human Rights Committee did upon appointment. He hoped that the Dominican Government would change the law relating to the oath of office.

Freedom of assembly and association (articles 21 and 22 of the Covenant) (section XI of the list of issues)

33. Mr. DIPP GOMEZ (Dominican Republic) said that workers in his country were free to associate and form trade unions. There were a number of trade unions, although he could not say exactly how many, and they were free to function and to defend workers against employer abuse. On occasion, political attempts had been made to bring the unions together into a larger grouping, but the unions had always resisted, preferring to retain their autonomy and independence. Complaints about abuses of workers' rights could be and had been lodged with ILO. Strikes were permitted under the Constitution and did take place.

34. The establishment of political parties was subject to approval by the Central Elections Board, which required any aspiring party to demonstrate that it enjoyed the support of 5 per cent of the electorate before it could be registered. There were no restrictions on the kind of policies or ideas which political parties could espouse.

35. Mrs. DE POLANCO (Dominican Republic) said that the planned revision of the Labour Code had not yet taken place. Nevertheless, judges, t achers and doctors in public employment were currently on strike, despite the lack of provision for such strikes in the existing Labour Code.

36. The CHAIRMAN said he did not believe the Committee had been told what law governed the establishment of political parties.

37. Mr. DIPP GOMEZ (Dominican Republic) said that the relevant law was that establishing the Central Elections Board; he could not remember either the number or the date of the law, but politicians in his country were thoroughly conversant with it.

38. Ms. CHANET asked for clarification regarding the right of civil servants to strike. It seemed that strikes by judges and other civil servants had been tolerated as a de facto situation, but the law still prohibited them. She wondered how the labour rights of civil servants would be guaranteed in future. On the question of labour rights in general, she said she understand that the Government had refused to register a union of agricultural workers. She would like to know on what legal basis the Government prevented unions from organizing, what provisions were taken to ensure that union members did not lose their jobs because of their union activities and what recourse they would have if that did happen.

39. Mr. COORAY pointed out that article 22 of the Covenant stated that everyone must have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. The only

(Mr. Cooray)

restrictions allowed were those listed under paragraph 2 of article 22. It was his understanding that the Dominican Labour Code barred agricultural and certain other categories of workers from forming trade unions. He noted that paragraph 38 of the report, concerning the right of assembly, quoted article 8 (7) of the Constitution, which provided for freedom of association and of assembly without arms, as long as the purposes of the association were not prejudicial to public policy, national security or propriety. He wondered whether that provision did not enable employers to evade their obligations and responsibilities under the Labour Code provision which prohibited employers from practising discrimination and interfering with their workers.

40. He understood that the Government had assured the International Labour Organisation that it would introduce a bill to protect trade union members from losing their jobs. He would appreciate some information on the progress of that bill. He understood that in 1983, the President of the Dominican Republic had set up a special commission to review the situation of agricultural workers in general and of Haitian agricultural workers in particular, and to propose measures to improve their situation. He wondered whether that commission had already made its recommendations and to what extent the Government planned to implement them.

41. Mr. NDIAYE said he would appreciate clarification of the laws which excluded agro-industrial, agricultural and other workers from the right to form trade unions. He would also like more information about the exclusions relating to civil servants.

42. Mr. ANDO said he too would like clarification of the issues raised by Mr. Cooray and Ms. Chanet. He wished to point out that similar questions had been asked during the discussion of the initial report of the Dominican Republic, and that no answer had as yet been provided.

43. Mrs. HIGGINS asked for further information concerning the planned revision of the Labour Code. Although it seemed that strikes by civil servants were tolerated in practice, they were still prohibited by law and it would be better if the right of civil servants to strike was also secured in the law. She would like to know who was classified as a civil servant for purposes of the formal prohibition of the right to strike.

44. Mrs. DE POLANCO (Dominican Republic) pointed out that freedom to form trade unions was enshrined in article 8 (11) of the Constitution. Civil servants did not have the right to form trade unions because they worked in priority areas, such as education. However, strikes by teachers and other civil servants had been tolerated. The Secretariat of Labour was studying the possibility of including civil servants in the groups which were allowed to strike. A civil servant was by definition any person whose employer was the State.

45. With regard to agricultural workers, a decree had been issued and a commission set up to enable them to present their complaints when they disagreed with a collective agreement reached with their employers. The Labour Code had not yet

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been changed, but a working group was engaged in the task of proposing an amendment which would include agricultural workers in the Labour Code so as to allow them to participate in trade union activities.

Protection of family and children (articles 23 and 24 of the Covenant) (section XII of the list of issues)

46. Mr. DIPP GOMEZ (Dominican Republic) said it was the function of the State to protect the family. Married women had equal rights with their husbands in regard to property. If a couple was married under a community property agreement, both spouses shared ownership of the property. If the wife had owned property before her marriage, that property continued to belong to her. Legitimate children had full inheritance rights, while illegitimate children who had been recognized by their father had the inheritance rights established by law. Children born of a de facto union and not recognized by their father did not have inheritance rights.

47. With regard to the employment of minors, it was common to see minors selling goods on the street, helping out in supermarkets and working with their parents in car repair shops and other family businesses. However, no minors were to be found working in industries such as electronics and textiles, because labour inspectors would impose penalties on any employer who hired a minor.

48. Mrs. DE POLANCO (Dominican Republic) explained that married women and single women had the same rights. When a couple got married, they had to choose between a community property régime and a separate property régime. In the former case, the husband administered the property; a change was being proposed whereby the wife would have equal rights in that regard. As far as inheritance rights were concerned, a bill was being proposed under which the rights of illegitimate children would be recognized. At present, illegitimate children who were recognized by their father inherited one half the amount that legitimate children inherited. The law made it compulsory for the father to maintain all minor children, provided that he had recognized them, and he could be put in prison for not providing maintenance. The law prohibited the employment of any minor under the age of 18; unfortunately, many minors did work, as Mr. Dipp Gomez had mentioned, but they did not do so in major industries, where the law was strictly enforced.

49. Mr. AGUILAR URBINA noted that article 11 (1) of the Constitution provided that all persons born in the territory of the Dominican Republic were considered citizens, with the exception of the legitimate children of foreigners resident in the country as diplomatic representatives or in transit through the country. He understood that there had been cases in which children of Haitian parents had been denied registration as nationals. He wondered whether the provision regarding children whose parents were in transit might not be used to justify refusing nationality to children of undocumented Haitians.

50. Mr. DIPP GOMEZ (Dominican Republic) said he did not know of any cases in which children of Haitians had been refused nationality. There might be some isolated cases of government officials refusing to register a child of Haitian parents, but that certainly was not official practice.

Right to participate in the conduct of public affairs (article 25 of the Covenant) (section XIII of the list of issues)

51. Mr. DIPP GOMEZ (Dominican Republic) said that the only requirement for participation in public service was that a person be qualified for the job for which he was applying. In the case of access to elective office, that depended on the person's ability to attract votes. There was no other requirement, such as religion, sex, race or any other.

52. Mr. AGUILAR URBINA noted that article 13 of the Constitution stipulated that one of the rights of citizenship was the right to vote. Article 9 (d) of the Constitution stated that every Dominican citizen had the duty to vote, and article 88 stated that voting was compulsory for all citizens. He would like to know what means were used in the Dominican Republic to enforce that obligation. If someone objected to voting on grounds of conscience, would he be punished? He would like to know what the abstention rate had been in the latest elections. Articles 14 and 15 of the Constitution referred to loss and suspension of the rights of citizenship, including the right to vote. He would like to know why persons convicted of espionage and certain other crimes would lose the right to vote irrevocably. Also, article 88 (2) stated that members of the armed forces and the police were not allowed to vote. He would like to know the reason for that provision.

53. Mr. EL-SHAFEI said that a distinction was being drawn between citizens by birth and naturalized citizens, as evidenced by the conditions for eligibility for election to the Senate in article 22 of the Constitution. He asked how such restrictions were justified, in view of article 25 of the Covenant.

54. Mr. WENNERGREN asked whether the obligation to vote, under article 88 of the Constitution, was compatible with freedom of conscience as provided for in article 18 of the Covenant. If, by conscience or religion, a citizen could not vote, article 88 would appear to violate that right.

55. He asked for clarification of article 15 (b) of the Constitution which referred to judicial interdiction as a condition under which citizenship could be suspended. With regard to article 15 (a), who decided when rehabilitation had been accomplished and according to what criteria?

56. Mr. DIPP GOMEZ said that there had been a 30 to 40 per cent abstention rate in the latest elections, but no penalties had been imposed on individuals who did not vote. A person serving a criminal sentence lost the right to vote only while serving the sentence, and that right was restored when he returned to society. The limitations on naturalized citizens running for election to the Senate had been needed at one time to protect the Dominican Republic from interference by foreign

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Powers, who had used money to influence candidates for public office. The people wanted senators who would serve in good faith and with a commitment to the nation.

57. The right to vote was not extended to members of the armed forces because of events in the history of the Dominican Republic. The army had been a major political force in the past, and it was now desirable to preserve its political neutrality.

Right of persons belonging to minorities (article 27 of the Covenant) (section XIV of the list of issues)

58. Mr. DIPP GOMEZ said that there was no minority problem in the Dominican Republic. By "minority", he meant a group living in a certain area and demanding certain rights, and no such enclaves existed.

59. Mrs. HIGGINS pointed out that article 27 of the Covenant defined minorities as members of an ethnic, religious or linguistic group. All that was required was that minorities have the right to enjoy their own culture, language or religion. It would be possible to say that a State party had minority groups, but that they enjoyed their full rights. To say that no minorities existed showed a misunderstanding of the Covenant.

60. Mr. COORAY referred to the statement that, although 90 per cent of the population was Catholic, 10 per cent belonged to other religions; that would indicate the existence of a religious minority. French-speaking Haitian workers would constitute a linguistic minority.

61. Mr. DIPP GOMEZ said that Dominicans had many and diverse ethnic, linguistic and religious origins. So far, however, no group had demanded specific rights; therefore, there was no minority problem.

62. Mrs. DE POLANCO said there was no special legislation promoting minority rights because minorities were integrated into society and their rights were protected in the same way as those of the majority of Dominican citizens.

63. Mrs. HIGGINS pointed out that the existence of minority groups was not necessarily associated with complaints. Minorities clearly existed in the Dominican Republic, but no special provision was made for their protection because they were integrated into society and enjoyed all legal rights, while retaining their own culture. The appropriate answer would therefore have been that minorities existed, but that they enjoyed all their rights under article 27 of the Covenant.

64. The CHAIRMAN said that discussion of the list of issues was now concluded. He invited general observations from the members of the Committee.

65. Mr. POCAR thanked the representatives of the Dominican Republic for their efforts to answer the Committee's questions, but said that some concerns remained,

(Mr. Pocar)

perhaps because the information given was not exhaustive. Perhaps there were no violations of human rights under the Convenant, but he could not be sure from the information given. In particular, the situation of Haitian workers deserved attention and appeared to involve several violations of the Covenant.

66. He still had some doubts about the legal situation in the Dominican Republic. Under the Constitution, rights could often be restricted by law under certain conditions. The Committee had asked about the content of such laws and had been given general answers, such as the need to protect public policy, national security and public morality. The Covenant provided for restrictions on rights under the law, but domestic law must detail the cases in which limitations could apply. He feared that Dominican law in such matters was far too general and left far too much room for interpretation, and that the Covenant was not being respected.

67. Mr. EL-SHAFEI said that his essential point of difference with the representatives of the Dominican Republic concerned the limits and restrictions on rights under the Covenant. It was clear from the discussion that their perspective differed from that of members of the Committee. The Committee was raising common issues which were useful for in-depth research into the articles under consideration, so that the State party could benefit from the dialogue and a common perspective could be achieved. The Dominican Republic should have no difficulty with observing the Covenant, for it was an international legal instrument whose norms were similar to those of bilateral human rights agreements to which the Dominican Republic was a party.

68. Mr. FODOR said that practical information on the implementation of the Covenant was missing from the report. Other sources of information, however, indicated that the actual human rights situation was more favourable than it appeared from the dialogue with the Committee, and that human rights were widely enjoyed. The major problem appeared to be abuse of the rights of Haitian agricultural workers.

69. The Dominican Republic faced many problems although neither the report nor the delegation had acknowledged them. Those problems surely had an impact on the exercise of human rights. For example, the large backlog of court cases appeared to result in a high rate of pre-trial detention. In those conditions, it was hard to see how the right to be presumed innocent until proven guilty could be protected.

70. He was also concerned about the lack of legal provisions prohibiting discrimination against non-nationals. Article 8 of the Constitution covered all persons, but article 100 limited rights to nationals. The legal basis for claims by non-nationals under article 26 of the Covenant was not clear.

The meeting rose at 1.10 p.m.